

HOWELL SPEAR

IBLA 84-808

Decided March 29, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting appellant's high bid for competitive oil and gas lease W-87856.

Affirmed.

1. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases:
Discretion to Lease

The Secretary of the Interior has the discretionary authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate. The explanation provided must inform the bidder of the factual basis of the decision and must be sufficient for the Board to determine the correctness of the decision if disputed on appeal.

2. Oil and Gas Leases: Competitive Leases--Oil and Gas Leases: Discretion to Lease

The Department is entitled to rely on the reasoned analysis of its technical experts in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Where a decision to reject a bid has been made in a careful and systematic manner utilizing the advice of such experts, the decision will not be reversed, even though the determination may be subject to reasonable differences of opinion, where an appellant fails to meet his affirmative obligation to establish that his bid is a reasonable reflection of fair market value.

APPEARANCES: Howell Spear, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Howell Spear has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated July 27, 1984, which rejected his high

bid submitted for parcel 13 at the February 1, 1984, competitive oil and gas lease sale. The parcel embraced 190.64 acres in the W 1/2 SW 1/4, lots 3 and 5, sec. 4, T. 16. N., R. 94 W., sixth principal meridian, Sweetwater County, Wyoming. Spear's bid of \$ 1,125, or \$ 5.89 per acre (or fraction thereof), was the only bid received for the parcel. BLM rejected the bid because it was substantially below the presale estimate of value. BLM concluded in its decision:

We have determined that the bid is inadequate and must be rejected. The district utilized two different methods to determine the value from geologic reports and a discounted cash flow analysis.

Parcel 13's value, using the discounted cash flow program, along with engineering and economic factors produces a present worth of \$ 289,978. The estimate for the costs of having to join the communitization agreement are \$ 254,032, leaving a net worth of \$ 35,946 or \$ 188.55 per acre.

In his statement of reasons appellant asks the Board to reverse the decision of the State Office, stating that:

[T]he determination of the BLM in that the bid was inadequate did not take into account many factors which bear on the value of an oil and gas lease. They state that the lease would have a net worth of \$ 35,946.00 after allowing for costs of drilling of \$ 254,032.00. They make no allowances for operating expenses over the life of the well, estimated at \$ 35,000.00 by appellant. They make no allowances for failures of equipment, or emergencies. They make no allowances for market loss. Many wells have been shut partially or wholly down because of lack of market. They make no allowances for lost market, or decrease of price of product. It is well known that the whole area of the Green River Basin has had arbitrary decrease in gas prices by gas purchasers, cutting prices by more than 50% in many case. Finally, even if it were possible to make a profit of \$ 35,946.00 on an investment of \$ 254,032.00 over a period of five years, that would only be a 2.8% return on investment, which using the BLM's own figures, would not be an adequate incentive for drilling of such a well.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1982); Michael Shearn, 83 IBLA 53 (1984); Ronald C. Agel, 83 IBLA 76 (1984); Viking Resources Corp., 80 IBLA 245 (1984); Edward L. Johnson, 73 IBLA 253 (1983). This Board has consistently upheld that authority, so long as there is a rational basis for the conclusion that the highest bid does not represent fair market value for the parcel. Clarence Sherman, 82 IBLA 64, 65 (1984); Viking Resources Corp., *supra*, at 246; Glen M. Hedge, 73 IBLA 377, 378-79 (1983); Edward L. Johnson, *supra* at 254-55. Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary

reserves the right to reject a high bid which will not provide a fair return. Viking Resources Corp., *supra* at 246; Glen M. Hedge, *supra* at 379; Coquina Oil Corp., 29 IBLA 310, 311 (1977).

[2] The Department is entitled to rely on the reasoned analysis of its technical expert in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Viking Resources Corp., *supra* at 247; L. B. Blake, 67 IBLA 103 (1982). However, when BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided in the record to support the decision. Mesa Petroleum Co., 81 IBLA 194, 195 (1984); Edward L. Johnson, *supra* at 255. Otherwise, if the bid is not clearly spurious or unreasonable on its face, the Board has consistently held that the decision must be set aside and the case remanded for compilation of a more complete record and readjudication of the acceptability of the bid. Kevin J. Bliss, 82 IBLA 31, 32 (1984); Edward L. Johnson, *supra* at 255.

In this case, the BLM decision set forth the presale evaluation of \$ 188.35 per acre as well as a summary of how that value was arrived at. In its answer, BLM submitted an economic evaluation for parcel 13. The answer states:

The evaluation used the DCF (discounted cash flow) analysis which is a widely accepted and practiced method for oil and gas lease evaluation. The DCF was correlated with a detailed geologic report on Parcel No. 13. The attached evaluation shows that all of Mr. Spear's reasons for appeal have been taken into account in the estimate of value. In fact, operating expenses, drilling costs, price of product at time of lease sale, market trends, rate of return, and risk are all integral elements of DCF analysis.

BLM's answer also states, however, that the evaluation contains "proprietary geological information" submitted to BLM by owners and operators of oil and gas leases which should not be released to appellant or the public in general. We need not evaluate whether this information is properly regarded as proprietary, however, and we do not base our decision on this evaluation because other material in the record demonstrates that appellant's bid of \$ 5.89 per acre must be considered unreasonable. ^{1/}

BLM's answer includes a bid comparison chart of appellant's bidding pattern on other parcels in this sale. This chart shows the high bid per acre on each parcel, the average of all bids on each parcel, appellant's bid, the number of bids received on each parcel, and the ranking of appellant's

^{1/} See Craig Folson, 82 IBLA 294 (1984); see also 43 CFR 4.24(a)(4), which provides: In any case, no decision on appeal or after a hearing shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the appeal or hearing.

bid as to all other bids received on each parcel. 2/ The comparison chart indicates that appellant submitted bids on all 21 parcels offered in the sale. He was the lowest bidder on 18 of the 21 parcels and underbid others on 20 of the 21 parcels. Only where he was the sole bidder on parcel 13 was his the high bid. The average high bid for the 21 parcels listed for the February 1, 1984, sale was \$1,747 per acre, while appellant's average bid for these parcels was \$13.99. These statistics clearly establish that appellant had consistently underestimated the fair market value of the parcels in the sale, and demonstrate that his single bid for parcel 13 cannot be seriously relied on for fair market value.

In response to this analysis appellant states his belief that the Department has "an almost subconscious prejudice against small independent individual oil and gas operators." We do not agree. The fact that appellant is a small operator whose bidding must reflect his economic judgment as to what is a prudent undertaking for his size is certainly understandable, but does not establish fair market value for a parcel. Ronald C. Agel, supra at 80; Viking Resources Corp., supra at 248. Appellant's allegations fail to justify his bid as a fair return to the Government for a lease in this situation.

2/

| <u>Bid Comparison Chart</u> | | | | | |
|-----------------------------|-------------------------------|---------------------------------|-----------------------------|---------------------|-------------------------|
| | <u>Per Acre High Bids</u> | <u>Per Acre Average Bid</u> | <u>Howell Spear Bid</u> | <u>No. Bids</u> | <u>Spear's Rank</u> |
| 1. | 50.00 | 31.11 | 3.75 | 7 | 7 |
| 2. | 55.00 | 29.63 | 3.50 | 4 | 4 |
| 3. | 389.00 | 128.59 | 3.75 | 8 | 8 |
| 4. | 75.00 | 29.94 | 2.08 | 6 | 6 |
| 5. | 452.00 | 94.28 | 4.69 | 6 | 6 |
| 6. | 10,733.00 | 1,912.00 | 68.75 | 13 | 11 |
| 7. | 353.50 | 155.96 | 9.38 | 3 | 3 |
| 8. | 537.05 | 126.96 | 2.50 | 6 | 6 |
| 9. | 80.00 | 36.89 | 4.17 | 6 | 6 |
| 10. | 105.00 | 51.97 | 1.88 | 4 | 4 |
| 11. | 300.00 | 95.16 | 2.50 | 5 | 5 |
| 12. | 15.00 | | 12.50 | 2 | 2 |
| 13. | 5.89 | | 5.89 | 1 | 1 |
| 14. | 14.00 | | 11.10 | 2 | 2 |
| 15. | 165.00 | 64.42 | 6.25 | 8 | 8 |
| 16. | 101.00 | 36.61 | 9.38 | 5 | 5 |
| 17. | 46.00 | 21.36 | 2.68 | 4 | 4 |
| 18. | 21,239.00 | 7,441.29 | 130.00 | 7 | 5 |
| 19. | 353.00 | 159.99 | 6.25 | 9 | 9 |
| 20. | 201.00 | 66.59 | 2.13 | 4 | 4 |
| 21. | 130.10 | 31.17 | .51 | 6 | 6 |

Average high bid for sale parcels = \$1,747/ac. Mr. Spear's average bid for the sale parcels = \$13.99.

Once the Government has presented sufficient documentation establishing the correctness of its fair market value estimate, the burden shifts to appellant to show not only that the Government's estimates did not constitute fair market value, but also that its bids do represent fair market value. Michael Shearn, supra at 55; Kevin J. Bliss, 82 IBLA 31, 33 (1984). We conclude that appellant has not met his burden of showing error in the BLM decision rejecting his bid as inadequate.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge.

